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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/611, 764	03/08/96	CUMMINS	B 8039.3806

12M2/0716
BARRY L HALEY
MALIN HALEY DIMAGGIO & CROSBY
ONE EAST BROWARD BLVD
SUITE 1609
FORT LAUDERDALE FL 33301

EXAMINER

5

ART UNIT	PAPER NUMBER
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1209

DATE MAILED: 07/16/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 3/14/97
 This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-5 is/are pending in the application.
Of the above, claim(s) — is/are withdrawn from consideration.
 Claim(s) — is/are allowed.
 Claim(s) 1-5 is/are rejected.
 Claim(s) — is/are objected to.
 Claim(s) — are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
 The drawing(s) filed on — is/are objected to by the Examiner.
 The proposed drawing correction, filed on — is approved disapproved.
 The specification is objected to by the Examiner.
 The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 All Some* None of the CERTIFIED copies of the priority documents have been
 received.
 received in Application No. (Series Code/Serial Number) —
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: —

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of Reference Cited, PTO-892
 Information Disclosure Statement(s), PTO-1449, Paper No(s). —
 Interview Summary, PTO-413
 Notice of Draftsperson's Patent Drawing Review, PTO-948
 Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES--

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Claims 1-5 are pending in this application.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cosby.

Applicant's remarks relative hereto, filed on 3/28/97, have been given due consideration, but were found unpersuasive. The essential basis for applicants' traversal is that the prior art by Cosby is directed to pesticidal utility, whereas applicant's invention is directed to microbicidal utility and human skin treatment utility. However, applicant is in error, for the claimed invention is directed to a

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composition and method of making said composition, not to a method of providing treatment. Therefore, Cosby's utility is not pertinent to the issue of obviousness of a suggested composition and process of making.

For these reasons, all claims are rejected again.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner John Pak whose telephone number is (703) 308-4538. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

PAK:tcj
June 24, 1997



JOHN PAK
PRIMARY EXAMINER
GROUP 1200